(7)

No. 91-489

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

OMAHA INDIAN TRIBE, TREATY OF 1854, ORGANIZED PURSUANT TO THE ACT OF JUNE 18, 1934 (48 STAT. 984; 25 U.S.C. 476) AS AMENDED,

Petitioner,

v.

AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY; JOHN R. WILSON; CHARLES E. LAKIN, FLORENCE LAKIN; R.G.P., INC., AN IOWA CORPORATION; HAROLD JACKSON; OTIS PETERSON; DARRELL L., HAROLD, and IOWA DEPARTMENT OF NATURAL RESOURCES, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

---

REPLY TO SOLICITOR GENERAL KENNETH W. STARR'S OCTOBER 24, 1991 LETTER TO CLERK OF SUPREME COURT AND TO BRIEF IN OPPOSITION OF RESPONDENTS JOHN R. WILSON, RGP, INC., and CHARLES E. LAKIN, *et al.*

WILLIAM H. VEEDER
Suite 920
818 18th Street, N.W.
Washington, DC 20006
(202) 466-3890

Attorney for
Omaha Indian Tribe

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

18

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Authorities Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-489

OMAHA INDIAN TRIBE, TREATY OF 1854, ORGANIZED PURSUANT TO THE ACT OF JUNE 18, 1934 (48 STAT. 984; 25 U.S.C. 476) AS AMENDED,

Petitioner,

v.

AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY; JOHN R. WILSON; CHARLES E. LAKIN, FLORENCE LAKIN; R.G.P., INC., AN IOWA CORPORATION; HAROLD JACKSON; OTIS PETERSON; DARRELL L. HAROLD, and LUEA SORENSON; STATE OF IOWA AND IOWA DEPARTMENT OF NATURAL RESOURCES, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

---

REPLY TO SOLICITOR GENERAL KENNETH W. STARR'S OCTOBER 24, 1991 LETTER TO CLERK OF SUPREME COURT AND TO BRIEF IN OPPOSITION OF RESPONDENTS JOHN R. WILSON, RGP, INC., and CHARLES E. LAKIN, *ET AL*

OPINIONS BELOW

Petitioner Omaha Indian Tribe seeks review of the opinion of the United States Court of Appeals for the Eighth

Circuit,[1] affirming the judgment of May 29, 1990, dismissing with prejudice Petitioner Tribe's claim in the United States District Court for the Northern District of Iowa, Western Division.[2]

JURISDICTION

The opinion of the Court of Appeals for the Eighth Circuit, was rendered May 28, 1991; the order denying Petitioner Tribe's Motion for Rehearing *En Banc* was entered July 31, 1991 by an Order dated August 21, 1991, the mandate was stayed until September 21, 1991 under further condition that the stay would be maintained if Petitioner Tribe filed its Petition for Certiorari by September 21, 1991. The Court has jurisdiction pursuant to 28 U.S.C. Sec. 1254 (1).

SUMMARY OF REPLY

Reply is here made by Petitioner Omaha Indian Tribe to both the October 24, 1991 letter from Kenneth W. Starr, Solicitor General, Department of Justice, to the Clerk of the Supreme Court, and the Brief in Opposition filed by Respondents Wilson, RGP, Inc. [Raymond G. Peterson], and Charles E. Lakin, *et al.*

It is possible to combine the Reply to Solicitor General Starr's letter to the Court and the Opposition filed by Respondents Wilson, RGP, Inc. [Raymond G. Peterson] and Charles E. Lakin, et al. by reason of the fact that from the inceptive moment of this litigation attorneys in the Department of Justice and those named Respondents have acted in concert to perpetrate the fraud upon Petitioner Omaha Indian Tribe, upon the Court itself, and upon the institutions established under the Constitution of

---

[1] Appendix F, p. 40a, *et seq. Omaha Indian Tribe v. Agricultural & Industrial Company, et al.*, 933 F.2d 1462 (CA 8, 1991).

[2] Appendix A to Petition for a Writ of Certiorari, p. 1a, *et al.*

the United States ". . .to protect and safeguard the public. . . ."[3]

Reference is also made to Petitioner Tribe's uncontroverted statements in its petition for certiorari establishing that those named Respondents are beneficiaries of the fraud practiced upon Petitioner Tribe by Myles E. Flint, Attorney Department of Justice, and the then United States Attorney, Evan L. Hultman.[4]

Solicitor General Starr is the most recent principal agent of the United States Trustee to join in the suppression of the facts pertaining to the fraud practiced upon Petitioner Tribe by the Department of Justice Attorneys Flint and Hultman.

This misstatement is made by Solicitor General Starr, bringing into focus the indisputable fact respecting the fraud practiced upon Petitioner Tribe in the case of *United States v. Wilson*:

> Although the United States was a party to related proceedings concerning other land claimed by the Tribe, *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 1979, the United States is not a party to the instant proceedings. We therefore are not filing a response to the certiorari petition.[5]

Initially it is necessary to correct the misstatement by Solicitor General Starr that the United States was a party to the case of *Wilson v. Omaha Indian Tribe*. The case of *Omaha Indian Tribe v. Agricultural. . .Wilson, Lakin, State of Iowa, et al.*, was the case presented to the Supreme Court in *Wilson v. Omaha*. That differentiation is critical by reason of the fact that Petitioner had rejected the case of *United States v. Wilson* as a fraudulent proceeding in-

---

[3] *Hazel Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944).

[4] *See* Petition, p. 11-12, para. V and VI.

[5] October 24, 1991 letter to the Clerk of the Supreme Court by Solicitor General Starr, first paragraph.

itiated by attorneys in the Department of Justice at the behest of and for the benefit of the Respondents to constrict Petitioner Tribe's valid claims as hereafter reviewed.

REPLY TO STATEMENT OF SOLICITOR GENERAL STARR

Solicitor General Starr, and the other attorneys in the Department of Justice—and indeed the courts themselves—have intentionally ignored this question presented by the Tribe in its pending Petition:

Whether the Department of Justice, acting in concert with Respondents Wilson, Lakin, RGP, Inc., State of Iowa, et al., is empowered to force its rejected representation upon the Tribe by filing without preparation a complaint constricting the Tribe's claim to 1900 acres in the case of *United States v.* [*Respondents*] *Wilson, RGP, Inc., State of Iowa, et al.*, with full information that Petitioner Tribe, represented by an attorney of its choice, was preparing Petitioner Tribe's own quiet title action claiming title to Tract I, the Blackbird Bend Meander Lobe, a unitary tract of land comprised of 6390 acres?

Solicitor General Starr is fully aware that Myles E. Flint, an attorney in the Department of Justice, submitted the contrived and constricted complaint in *United States v. Wilson* to Evan L. Hultman, who, as United States Attorney:

> 5. . .filed the fraudulent and contrived complaint in the case of *United States v. Wilson, State of Iowa, Lakin, RGP, Inc.*, [*Raymond G. Peterson*] *et al.* Evan L. Hultman had, as Attorney General for Respondent Iowa, repeatedly represented Respondent Iowa in state court litigation involving land [within the Blackbird Bend Meander Lobe] title to which resides in Petitioner Tribe.
>
> 6. . .Evan L. Hultman, by constricting Petitioner Tribe's claim to 1900 acres in the Blackbird Bend Area preserved and protected the interests of his

> former client, Respondent Iowa, by abandoning Petitioner Tribe's valid claims to an additional 4400 acres for the benefit of Respondent Iowa, Respondent RGP, Inc.,. . .and Respondent Lakin with whom Evan L. Hultman, by amicable arrangements with those Respondents, divided up virtually the entire 6390 acres of the Blackbird Bend Meander Lobe among those defendants.[6]

Solicitor General Starr, in his refusal to respond to Petitioner Tribe's charges, is tacitly acknowledging that he cannot respond to them without admitting that the Department of Justice, in violation of professional integrity, sacrificed the valid claims of Petitioner Tribe for the benefit of the land speculators who, without a scintilla of title, squatted upon Petitioner Tribe's lands. It is likewise a shocking admission by Solicitor General Starr that, though Respondent Iowa has not a scintilla of title, it is nevertheless illegally occupying 700 acres of land in the Blackbird Bend Meander Lobe concerning which land Petitioner Tribe proved were accretions to lands title to which resided in the Tribe—the 1900 acres in *United States v. Wilson*.[7]

Solicitor General Starr, repeating his misstatement that the United States was a party to the case of *Wilson v. Omaha Indian Tribe*, declared that he desired to bring to

---

[6] Petitioner Tribe's pending petition, p. 11-12, para. 5, 6. *See* Plate II, p. 12.

[7] *United States v. Wilson*, 523 F.Supp. 874, 896, (U.S.D.C.N.D.W.D.1981); reversal by Eighth Circuit, Judge Lay presiding, declaring that: "The district court found that the landowner cannot claim this land under the guise that it is fee-patented land. The court found the fee-patented land was completely washed away by the post-1923 westward movement of the river. We deem this fact not significant. It is the area of land now occupied by the landowners that is important." (*United States v. Wilson*, 707 F.2d 304, 309 (CA 8, 1982). By that statement by Judge Lay Petitioner Tribe was forewarned that the fraudulent Flint/Hultman complaint would be sustained by the Court of Appeals and is now being enforced against Petitioner Tribe with the disastrous results which were intended.

the Court's attention: ". . .those same allegations, which were deemed frivolous by the courts below, were presented by the same counsel for the Tribe to the Eighth Circuit and this Court on a prior occasion, in which the Court denied certiorari."[8] Solicitor General Starr seeks to cloak the undeniable fact that Myles E. Flint and Evan L. Hultman intentionally perpetrated the fraud upon the Tribe which has been reviewed above. It is elemental that under the Code of Professional Responsibility, Mr. Starr, as a lawyer, had the obligation to join Petitioner Tribe in exposing the fraud and as Solicitor General, the principal lawyer for the United States in the Supreme Court, had the full responsibility to ascertain and determine whether Petitioner Tribe's charges were indeed frivolous.[9]

Solicitor General Starr then presents the most critical issue involved in this Reply. He refers to the fact that the district court found without a hearing and contrary to Tribe's uncontroverted affidavits that ". . .Tribe's contentions of impropriety were entirely without factual or legal basis" and dismissed Petitioner Tribe's summary judgment, declaring without a hearing, that the charges were "'so flawed that no reasonable person could maintain that it is either factually well grounded or legally warranted.'" It is likewise stated in the excerpts submitted by Solicitor General Starr that the Court of Appeals declared that the allegations were "'frivolous and totally without merit'" and harshly sanctioned Counsel while the Court of Appeals, like the district court, suppressed and precluded a full and

---

[8] Solicitor General Starr's letter to the Court of October 24, 1991, second paragraph; *See* attachments to Solicitor General's letter.

[9] *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); *State of Arkansas v. Dean Foods Products Co.*, 605 F.2d 380, 384 (CA 8, 1979); *Emle Industries, Inc. v. Patentex Inc.*, 472 F.2d 562, 574 (CA 2, 1973); *Erwin M. Jennings Co. v. DiGenova*, 107 Conn. 491, 499; 141 A. 866, 868 (1968); *T.C. Theater Corp. V. Warren Bros. Pictures*, 113 F.Supp. 265, 268 (U.S.D.C.S.D.N.Y.1953); *Consolidated Theaters, Inc. v. Warren Bros.* 216 F.2d 920, 924 (Ca 2, 1954); *In the Matter of Cipriano*, 68 N.J. 398, 346 A.2d 393 (1975). *See*, Vol. 15, *Federal Practice and Procedure*, Sec. 3911; 1985 Supp., p. 245, *et seq.*

fair hearing respecting the charges.[10] Judge McManus at least demonstrated candor when he refused to permit the Tribe to be heard respecting the Flint/Hultman fraud by declaring that: "'. . .the fraud question, I just can't let that rabbit into this arena.'"[11]

REPLY TO BRIEF IN OPPOSITION BY RESPONDENTS JOHN WILSON; CHARLES E. LAKIN; AND RGP, INC. ET AL.

Petitioner Tribe's charge that the fraud practiced by Evan L. Hultman upon Petitioner Tribe while Evan L. Hultman was United States Attorney inured greatly to ". . .the benefit of Respondent Iowa, Respondent RGP, Inc. [Raymond G. Peterson] and Respondent Lakin."[12] That statement is not controverted by those Respondents who are fully aware that it was their insistence that caused Messrs. Flint and Hultman to perpetrate the fraud upon Petitioner Tribe. Those Respondents are likewise beneficiaries of the refusal by the district court and the Court of Appeals to hear Petitioner Tribe's sworn and documented charges of fraud.

Misstatements pervade all aspects of Respondents' Brief in Opposition. There it is stated that "[n]one of the land in the unconsolidated portion of Tribe's case was ever part of the Tribe's original reservation."[13] That last quoted excerpt in Respondent's Opposition brings to focus the degree that the district court and the Court of Appeals knowingly effectuated the Flint/Hultman fraud. Petitioner Tribe had initiated its action to quiet title to 6390 acres in the Blackbird Bend Area and the district court on January 26, 1976 entered its order granting Tribe's motion to consolidate the constricted and fraudulent complaint in *United States v. Wilson* with Petitioner Tribe's complaint

---

[10] Solicitor Starr's letter, attachments.

[11] *See* Appendix A of this Reply.

[12] Petition, p. 14, para. (6).

[13] Opposition, p. 2.

in *Omaha v. Agricultural. . .Wilson, et al.* Thereafter, acting *sua sponte*, Judge McManus on April 5, 1976, reversed his January 26, 1976 Order and constricted the litigation in the Blackbird Bend Area to the lands described in the fraudulent complaint filed by Evan L. Hultman.

An anomaly in these proceedings is a fact fully recognized by the Court of Appeals that, although Petitioner Tribe's claim to 6390 acres in Blackbird Bend was constricted to 1900 acres in accordance with the fraudulent complaint in *United States v. Wilson*, Petitioner Tribe, the Department of Justice, and all of the parties in the trial on the merits offered their proof in regard to the full 6390 acres. It was impossible for the parties in the trial on the merits to limit their proof to the Barrett Meander line by reason of the fact that the 6390 acres of which the Blackbird Bend Meander Lobe is comprised is a single, unitary tract bound to the north by the Iowa Northerly High Bank and to the east by the Iowa Easterly High Bank, both of which are natural monuments recognized by the Court of Appeals as encompassing the 6390 acres of which the Blackbird Meander Lobe is comprised.[14] As part of the aggressive assault upon Petitioner Tribe by Chief Judge Lay is this statement in the Opposition: "The Tribe's claims have therefore been deemed an action for ejectment" outside the Barrett Line.[15] In furtherance of that assault upon Petitioner Tribe an attempt is made to change Petitioner Tribe's quiet title action to a suit in ejectment forcing Petitioner Tribe to try its claims to the remaining 9400 acres before a hostile, non-Indian jury. The judicial hostility against Petitioner Tribe's efforts to be heard respecting its full claim to title and to maintain in the record the fraud issue gave rise to Judge Urbom's dismissal with prejudice of Tribe's entire case.[16]

---

[14] *Omaha v. Wilson*, 575 F.2d 620, 623, et seq, (CA 8, 1978). *See* Plates I, II, III, IV, p. 625-628.

[15] Opposition, p. 2.

[16] Petition, p. 13-14, para. (8),(9), (10), (11).

Respondents in their Opposition—while being unable to Answer Petitioner Tribe's assertions that it had been denied Judicial Due Process by both the district court and the Court of Appeals—stress to the Court that Petitioner Tribe had been repeatedly sanctioned by both the district court and the Court of Appeals. Petitioner Tribe and its Counsel make this response: Those repeated harsh sanctions by both the district court and the Court of Appeals stemmed from Tribe's refusal to accept the fraud practiced upon Petitioner Tribe by Messrs. Flint and Hultman, declaring they had a Constitutional right to be heard in regard to the forced, fraudulent representation by Flint and Hultman. Only by a full and fair hearing before a fair tribunal and a final fair determination in regard to the fraud practiced upon Petitioner Tribe will these issues ever be concluded.[17]

Respondents misstate the facts and the law in regard to Petitioner Tribe's title to accretions to its original Reservation lands. For example, Respondents declare that the T.H. Barrett line is a survey line. That is incorrect. It was a meander line of the Missouri River in 1867 and did not purport to be nor could it establish the boundary of the Omaha Indian Reservation. It simply demarked the sinuosities of the bank of the Missouri River in 1867. It is not a boundary.[18]

It is asserted by Respondents that fraud is not involved in Petitioner Tribe's claims to title to lands in Monona and Mission Bends. That statement is totally in error. Petitioner Tribe's valid claims to title were dismissed with prejudice by Judge Urbom by reason of the fact, among other things, that Petitioner Tribe was insisting it had a

---

[17] Petition, p. 8, Certificate of Counsel; p. 11, "Response to Specific Charges Giving Rise to the Judgment of Dismissal with Prejudice." *See, In re Murchinson*, 349 U.S. 133, 136 (1955); *Joint Anti-Facist Refuge Committee v. McGrath*, 341 U.S. 123, 152 (1951); *Aoude v. Mobile Oil Corp.*, 892 F.2d 1115, 1118 (CA 1, 1989); *Knapp v. Kinsey*, 232 F.2d 458, 465-467 (CA 6, 1956) *cert. den.* 352 U.S. 892 (1956).

[18] *Niles v. Cedar Point Club*, 175 U.S. 300 (1902).

right to a full and fair hearing respecting the fraud practiced upon Petitioner Tribe in regard to the 4400 acres in the Blackbird Bend Meander Lobe which are part of the so-called unconsolidated case. Respondents likewise ignore the fact that Magistrate Jarvey, in grave error, precluded Petitioner Tribe from offering evidence in regard to Petitioner Tribe's claim to lands in Monona and Mission Bends, which facts are fully reviewed in the Petition.[19]

CONCLUSION

Under the heading of "Summary of Argument," Respondents Wilson, Lakin, and RGP, Inc., as would be expected, adopt the same line of reasoning as does Solicitor General Starr in his October 24, 1991 letter. Confronted with the undeniable fact that Petitioner Tribe and its Counsel have been denied Judicial Due Process by both the district court and the Court of Appeals respecting the Flint/Hultman fraud, the Respondents have totally ignored the fact that both the district court and the Court of Appeals, while denying Petitioner Tribe the right to a full and fair hearing, have suppressed all evidence respecting the fraud, declaring the charges are frivolous and without merit.[20]

Respectfully submitted,

WILLIAM H. VEEDER
818 18th Street, N.W. #920
Washington, DC 20006
(202) 466-3890

Attorney for
Omaha Indian Tribe

Dated: October 30, 1991

---

[19] Petition, p. 8, para. (2) (a) *et seq.*

[20] *See, Goldberg v. Kelly*, 397 U.S. 254, 260 (1969) requiring an evidentiary hearing to comply with due process as mandated by the Constitution.

APPENDIX

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

C 75-4024
VOLUME I

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOHN R. WILSON, *et al.*,
Defendants.

C 75-4026

OMAHA INDIAN TRIBE, *etc.*
Plaintiff,

v.

HAROLD JACKSON, *et al.*,
Defendants.

C 75-4067
TRANSCRIPT OF PRE-HEARING
CONFERENCE AND SHOW CAUSE HEARING

OMAHA INDIAN TRIBE,
Plaintiff,

v.

AGRICULTURAL INDUSTRIAL INVESTMENT CO., *et al.*,
Defendants.

Courtroom
United States Courthouse
Cedar Rapids, Iowa
March 9, 1987

The above-entitled cause of action came on for hearing, pursuant to assigment.

BEFORE: HON. EDWARD J. McMANUS, Senior Judge.

Reported by:

Daniel J. Shaw, C.S.R.
[copy missing]

determine the damage to the improvements, which I've been trying to do, and I haven't been able to do, and also to have a survey conducted. This Exhibit A is the result of that survey. We got that much behind it finall after a lot of struggle and turmoil. Now all I want to do is determine the value of the improvements. That's set up for later this year, sometime in April, to resolve that question. Fraud isn't in this at all for me. That was never raised before Bogue. It was never raised, as far as I know, I don't know what was raised before Bogue because I wasn't there.

MR. VEEDER: Your Honor, let me—

THE COURT: But all I'm saying is, the fraud question, I just can't let that rabbit into this arena.

MR. VEEDER: Your Honor, you're striking the Tribe—

THE COURT: I'm not striking the Tribe. The Tribe has every right to appeal whatever I do, but I'm not going to try the fraud question and I've made that clear in my previous rulings, and you know that, Mr. Veeder, as an officer of the court, you know that, and you keep bringing that back up again and again and again, and I think you're doing a disservice to the Court by doing this.

MR. VEEDER: It might be a disservice to the Court, Your Honor, but it is certainly the only way my Tribe is

ever going to get its day in court to demonstrate what transpired.

THE COURT: You made your offer. You've got the question preserved as well as I know how you can preserve it. I don't know whether you took the proper steps because of the Eighth Circuit ruling early on, on my previous ruling, but--I'm sure you did everthing you could, everything you can think of to do, but you understand my problem. I'm just trying to bring this thing to some sort of a termination so you can take it to the Eighth Circuit and do whatever you want to do there or to the Supreme Court and do whatever you want to do in the Supreme Court with it.

MR. VEEDER: Absent a finding of fraud, we are dead, because if these people can force their representation on this Tribe, file a fraudulent complaint, then there is no

* * *